liability upon executed contracts; and it also works a great hardship on any foreign corporations that have unknowingly failed to carry out the State requirements.

However, under the latter holding, the law would almost invariably be obeyed, while under the former, no corporation would feel called upon to obey the statutes until it became necessary for them to bring some action or suit.

THE EXTENT OF THE POSTMASTER GENERAL'S RIGHT TO REGULATE THE USE OF THE MAILS.

How wide a discretion has the postmaster general in determining what are fraudulent enterprises? Can he supplement the regulations of Congress in determining what is second-class matter? These two questions have been decided in the recent cases of *American School of Magnetic Healing v. McAnnulty,* 23 Sup. Ct. Rep. 33, and *Payne v. United States,* 30 Wash. L. Rep. 791. In the first case the delivery of mail addressed to the plaintiff was prohibited by the postmaster general on the ground that its business of practicing and teaching by correspondence a system of healing diseases through the influence of the mind over the body was fraudulent. The Supreme Court regarded this action as in excess of authority and granted injunctive relief. While refusing to discuss whether the statute under which the Department acted, sec. 3929 U. S. Revised Statutes, is in conflict with the provisions of the Constitution against the deprivation of property without due process of law, the court, White and McKenna, J. J., dissenting, holds that the authority to exclude extends only to cases of fraud in fact, and that the question as to whether magnetic healing is a fraud, is one of opinion depending entirely upon individual belief and differing only in degree from a belief in any particular theory of medicine, electrical treatment, vaccination, or homeopathy, and is, therefore, not a proper subject for the decision of either an administrative officer or the courts. The attitude of the Missouri Supreme Court toward Christian science in the very recent case of *Wetmer v. Bishop,* 71 S. W. 167, is of interest in this connection as expressing the view that those claiming medical powers must prove them to the court on a basis of natural power and that the fact that witnesses claim to have benefited thereby is not of itself sufficient. The opinion reads, in part: "If there was anything in the plaintiff's business, which they called magnetic healing, that entitled it to the protection of the law and which was not perceptible to the uninstructed, the burden was on them to show the *rationale* of it, and failing to do so the court should close its door against them."

In the second case, that of *Payne v. United States, supra,* the Court of Appeals of the District of Columbia holds that the postmaster general has not the right to add to the regulations of Congress as to what shall constitute second-class matter, a provision that "periodical publications having the characteristics of books"

shall not be so admitted. The decision is based on the rule laid down in *Morrell v. Jones,* 106 U. S. 466, that all an administrative officer can do is to regulate the mode of proceeding to carry into effect what Congress has enacted. The case arose from an attempt to exclude the "Travellers' Official Guide," a publication issued quarterly in large volumes. At second-class rates it was being transmitted for only forty cents per number a year whereas it was costing the government two dollars a year. But it seems that the only remedy to cure this inequality lies in the hands of Congress.

HUSBAND'S LIABILITY FOR WIFE'S TORTS AS AFFECTED BY MARRIED WOMEN'S PROPERTY ACTS.

A recent California case decides that the husband is still liable jointly with his wife for torts committed by her and not connected with her separate property, notwithstanding recent legislation in that State giving the wife the right to sue and be sued, and contract in respect to her own property, as if she were a *feme sole. Henley v. Wilson,* 70 Pac. 21. This case raises the very interesting question as to how far the marital relation and the common law liabilities accruing from it, have been affected by these Married Women's Property Acts. The question has been decided both ways and even those cases which hold that his liability has been removed assign varying reasons.

In an English case decided in 1900, the court was asked to overrule a previous case (*Seroka v. Kattenburg,* 17 Q. B. D. 177), in which it was held that the effect of the Married Women's Act was not to change the husband's liability; but the court declined to do this, saying that since those acts did not expressly remove his liability, it still existed. *Earle v. Kingscote,* 1 Ch. 203. See also *Fowler v. Chichester,* 26 Ohio St. 9. The court in these two cases was content with saying that his liability was due to the common law rule which could not be repealed by implication. And the courts taking this view, generally refuse to go behind the common law rule in search of the reason for it.

But the courts (and they are in the minority) which hold that the husband's liability has been removed, do go behind the rule for its reasons, and say that its further application is inconsistent with the spirit of the acts in question. But even these courts disagree as to what the reasons for the rule are. Some find it to be that the husband had possession and control of the wife's property. This view is taken by *Martin v. Robson,* 65 Ill. 129, and the court proceeds to justify its finding that the common law was abrogated by this legislation, in these words: "A liability which has for its consideration rights conferred, should no longer exist when the consideration has failed [the husband's right to the control and possession of her property is taken away by these acts]. If the relations of husband and wife have been so changed as to deprive him of all right to her property, and to the control of her person and her time,